IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2882 OF 2006

Eupharma Kamgar Sangh,)
Eupharma Laboratories Ltd.,)
Sahakar Marg, Tejpal Scheme Road No.5,)
Vile Parle (East), Mumbai-400 057)..Petitioners.

Versus

1. M/s. Eupharma Laboratories Ltd.)
Sahakar Marg, Tejpal Scheme Road No.5,)
Vile Parle (East), Mumbai-400 057)

2. Prime Properties Development Corporation)
Ltd. having its address at 101 Soni House,)
Plot No.34, Gulmohur Road No.1, JVPD)
Scheme, Vile Parle (West), Mumbai-400 040)

3. Commissioner of Labour, Commerce Centre,)
6/7th floors, Tardeo, Mumbai-400 034)

4. The State of Maharashtra, through the)
office of Government Pleader, High Court,)
Mumbai.)

5. The Municipal Corporation of Greater)
Mumbai, Mahapalika Marg, Mumbai-1)..Respondents

Mr. Rajesh Gehani for the petitioners.
Mr. R.K. Pandey, instructed by M/s. PRS Legal, for respondent No.2.
Mr. P.M. Mokashi, Assistant Government Pleader, for respondent Nos. 3 and 4.

CORAM: **SWATANTER KUMAR, C.J.** &
S.R. SATHE, J.

Judgment reserved on: April 02, 2007
Judgment delivered on: April 19, 2007

JUDGMENT (Per Swatanter Kumar, C.J.):

Eupharma Kamgar Sangh, claims to be a Union representing employees of M/s. Eupharma Laboratories Limited, respondent No.1 in the petition. According to the petitioners, the Company was employing more than 100 workers in their employment. Somewhere in the year 1999, the Company stopped its activities by declaring lock-out in the garb of closure. It entered into various disputes and, as a result of defaults committed by the Company, the State Bank of India issued a public notice that property belonging to the Company was to be auctioned in August, 2005. The Commissioner of Labour (respondent No.3 in the writ petition) on 27th June, 2005, in furtherance to the proceedings taken, had issued no objection certificate for development of the property. The petitioner union on 10th August, 2005, wrote a letter to the State Bank of India requesting them to disclose the liability of Rs. 5 crores in respect of the workmen to the purchaser. For reasons

best known, this was not done and the auction purchaser of the property, Prime Properties Development Corporation Limited, respondent No. 2 herein, started its development work on the land in question. Being aggrieved by the action of the respondents, on 25th January, 2006, the petitioners again wrote a letter to respondent No. 3 about their claim but of no consequence resulting in filing of the present writ petition on 18th November, 2006.

2. The Petitioners, while heavily relying upon the policy dated 27th June, 2005, framed by the Government of Maharashtra stated that no objection certificate for development should normally be not issued without settling dues of the workmen. The letter reads as under:-

> "Date 27th June, 2005.
>
> To
>
> 1. The Collector (All)
> 2. Commissioner, Municipal Corporations (All)
> 3. Chief Executive Officer, Zilla Parishads (All)
> 4. Chief Officers, Municipal Councils (All)
>
> Subject: Obtaining No Objection Certificates from Commissioner of Labour before permitting development of land belonging to Mills and Factories.

In respect of the above subject, you are informed that it has been brought to the notice of this office that development of land belonging to closed mills and factories into residential and commercial complexes is going on without settlement of legal dues of the workmen. Social issues have arisen due to the avoidance and non settlement of dues of the workmen by the managements of such mills and factories. Looking into the seriousness of this issue, in the conference held at Nagpur, Hivali, on 16th December 2003, a meeting of the Honourable Chairman of the Legislative Assembly, Honourable Chief Minister, Revenue Minister, Labour Minister was held. In the said meeting it was decided that only after no objection certificate about the settlement of dues of workmen is issued by the Office of the Commissioner of Labour, further steps for the development of complexes should be taken by the Collector and Commissioner of Municipal Councils. Honourable Chief Minister instructed the relevant connected departments that till such time certificate about settlement of dues of the workmen is not issued by the office of the Commissioner of Labour till that time permission to construct complexes should not be given. (Minutes of the said meeting are enclosed herewith).

On the above decision being taken, the office of the Commissioner of Labour by its letter No. AS/2004/Closed factories/Karyasan/ 1 dated 7th January, 2004 informed all

the relevant departments to comply the same. The said letter is also enclosed herewith.

On being informed that inspite of the above decision being intimated to the Officers of the Zilla Parishads and Municipal Councils, the decision is not being implemented therefore by this letter all the Collectors, Commissioners of Municipal Corporations, Chief Officers of Municipal Councils are requested to strictly follow the decision taken by the Honourable Chief Minister and to inform about the same to all the relevant officers. Also submit the information in the format enclosed herewith about the closed mills/factories.

Information about the closed mills/factories

Sr. No.	Name of the closed Mill/ Factory.	Number of workmen	Date of closure of Mill/Factory

Area of the land	Date of grant of permission for development	Whether Comm. of Labour has issued Certificate. “	Remarks

Relying upon the said policy, it is the case of the workmen that there is collusion between the authorities, Company and the builder, as a result of which they are suffering serious prejudice and there is every likelihood that they would not be able to recover the dues of the workmen. The

respondents prayed for dismissal of the writ petition primarily on the ground that the auction was held in furtherance to the proceedings before the competent forum. The public sale was conducted by a consortium of banks led by State Bank of India under the provisions of the Securitisation Act which is a special law for recovery of dues of the financial institutions covered under the Act. The Act would have prevailing effect over the general law. In view of the order passed by the Industrial Court on 12th August, 2005, the property was put to an auction. It was clearly stated in the said order that the consortium Banks were entitled to enforce their right to sell the land and building in accordance with the provisions of the Act and the property was resultantly put to auction and had been purchased by respondent No. 2 who had submitted a bid for Rs. 15.50 crores and even tendered the money of Rs. 50 lakhs. The highest offer was accepted and the State Bank of India, upon receiving the full and final payment of Rs. 20 crores, has issued a deed of confirmation of sale and the said deed was executed on a stamp paper value of Rs. One crore and was registered in accordance with law. The possession of the property was given. The title in the property was also passed. Besides this, it is also the case of the respondents before the Court that the petition suffers from the defect

of delay and laches inasmuch as the public notice was issued on 25th July, 2005, and the petitioners had waited for all this time and after the transfer of the title in the property have raised the issues which cannot be re-opened and/or gone into in the present writ petition. As such, the writ petition is an abuse of the process of law and is liable to be rejected.

3. From the above noticed factual matrix of the case, it is clear that no specific allegations have been made that respondent No. 2 is acting for and on behalf of or in collusion with the Company, respondent No.2. The orders passed by the Tribunal have attained finality and, therefore, the same cannot be indirectly opened in the present writ petition. Respondent No.2 is a bona fide auction purchaser for consideration and has paid the entire sale consideration. The sale was confirmed whereafter the sale certificate was issued and a sale deed has been duly registered in favour of respondent No.2. In other words, the title in the property is now vested in respondent No.2. Respondent No.2 is the lawful owner in possession of the property. It cannot be disputed that the workmen had come to know of the sale of the property prior to June, 2005, but took no effective steps for determination of the dues payable to them much less for attachment of the amount in the hands of

the Bank or in the hands of respondent No.1. Intentional default on the part of the workmen not to have their claims adjudicated by the competent forum either under the Industrial Disputes Act or any other law in force obviously leads to one conclusion that the petitioners were never serious about their dues. This conduct would lead to an adverse inference against the petitioners. Neither any order nor any proceedings have been brought to the notice of the Court which were initiated or had culminated into an order prior to or even after transfer of the title in favour of respondent No.2.

4. Another contention raised on behalf of the petitioners is that in view of the statutory mandate contained in Section 529-A of the Companies Act, 1956, the dues of the workmen are to be paid in priority to all other debts and in the case of a secured creditor covered under Section 529 of the said Act, they have to be treated *pari passu* in relation to disbursement of their dues. This proposition of law can hardly be questioned, and would hardly be of any relevance in the facts of the present case. Firstly, the company was not in winding up and this Court is not dealing with the winding up petition. Secondly, nothing prevented the petitioners from taking steps before the Debt Recovery Tribunal for attachment of the said amount or claiming *pari passu* charge for their

dues. Having failed to assert its right in accordance with law, the petitioners cannot take advantage of their own default.

5. We may also notice that the workmen had approached the Industrial Court by filing a complaint being Complaint (ULP) No. 1059 of 1999, praying that the Banks should be added as parties in their complaint and whereafter appropriate relief be granted. They had also mentioned that the Authorised Officer had initiated action with regard to enforcement of mortgage charge over the land and building of the Company. By a detailed order, both these reliefs were declined and the application was dismissed. The relevant part of the said order reads as under:-

> " In my opinion, the right of the complainant-applicant is only against their employer i.e. Respondent No.1 Company and Respondents No.2 to 4. The factory of the Company at Bombay is only closed up. The Company has not wound up. The Company's legal entity is in existence. Hence, the workers do not have any right which they enforce against the Bank in law, when the Bank, the secured creditors are entitled for protection of special enactment i.e. Securitisation Act has taken action against the respondent No.1 limited to the extent of the

mortgaged property and the same has not been extended to the undertaking carried out by the management of the Company.

23. Further, in my opinion, the secured creditors i.e. The proposed respondents No. 6 to 8 banks are not necessary parties to the proceedings as the presence of these proposed respondents is not necessary to adjudicate upon the issues between the parties. There is no unfair labour practice alleged against these proposed respondents to be joined as necessary parties to the complaint. Their presence in the complaint is not necessary for the effective adjudication of the real controversy between the parties.

24. Hence, on hearing the Learned Advocate for the parties at length and on carefully going through the record I am constrained to pass the following order in the interest of justice"

6. The above order was adverse to the interest of the workmen but still they accepted the said order and did not question the correctness, legality or otherwise of the said order in any appropriate proceedings. The order settled the rights of the workmen as far as the Company was concerned.

7. Lastly, the question in relation to implementation of the

Government policy needs to be examined by the Court. The policy of the Government in no uncertain terms indicates that the development of the land belonging to closed mills and factories into residential and commercial complexes is going on without settlement of legal dues. To resolve this issue, a decision was taken that no objection certificate about the settlement of dues of the workmen is to be issued by the Office of the Commissioner of Labour. Further steps for development of complex should be taken by the Collector and the Commissioner of Municipal Councils and without such settlement, permission to construct complexes should not be given. What is the scope of this policy legally and what is its strength in law is a question which needs to be examined. Though the same has not been specifically raised, we are inclined to do so. The bare reading of the language of the policy clearly shows that it applies to the Company which owns the property and not to a third party who is a bona fide purchaser of the property in a process of execution in accordance with law. The purpose behind the policy is to prevent the mischief that a Company owning the property after closing the unit may not venture upon commercial or residential complexes with an intention to make money without settling the dues of the workmen. This can only be the plausible explanation behind the policy. The

Court proceedings or proceedings before the statutory body can hardly be controlled by the policies of the Government. The auction purchaser seeks the rights through the process of the Court / Tribunal. The auction purchaser having paid the market value in terms of the total sale consideration cannot be deprived of its rights which otherwise have attained finality. The second respondent in the present case is stated to have got permission from various authorities after obtaining the no objection certificate from respondent No.5 on 27th June, 2005. The delay on the part of the petitioners is a relevant and material consideration for the Court while balancing the equities between the parties. The petitioners did not question the correctness of the permission granted on 27th June, 2005, at any point of time earlier and have not questioned the same in the present writ petition. Huge amounts have been spent by respondent No.2 on the land in question as is apparent from the records produced before us. Thus, it would be unjust and unfair to obstruct their work or pass any prohibitory orders, particularly keeping in mind the facts and circumstances of the case.

8. For the reasons aforesaid, we find no merit in this writ petition. The same is dismissed. However, we leave the parties to bear their own

costs.

CHIEF JUSTICE

S.R. SATHE, J.